



May 29, 2015

To: Executive Board

Subject: **Appointment of Foothill Transit Treasurer**

Recommendation

Adopt Resolution No. 2015-05 (Attachment A) designating the Director of Finance as the Foothill Transit Treasurer.

Analysis

Entering our 27th year as a public agency, Foothill Transit has developed a mature internal management structure that is nationally recognized for excellence and performance. Oversight and management of the agency has shifted to in-house management responsibility with Board continuing its key role in governance and policy-making. This approach has resulted in a strong management team with a forward looking but fiscally responsible culture that is an essential element of the agency's success.

Attachment B is a legal opinion from General Legal Counsel Darold Pieper regarding the Executive Board's options for the appointment of a Treasurer for the organization. In the past this position has been held by a member of the Executive Board. However, the daily duties of the Treasurer are largely conducted by the Director of Finance.

The role of the Treasurer at Foothill Transit is to ensure that all financial affairs are managed prudently and in accordance with approved policies and procedures. The Director of Finance is hired by the Executive Director. Supervision of this position will not change should this recommendation be approved inasmuch as the Executive Director's employment contract requires the Executive Director to *"...be responsible for the accuracy of bills and vouchers upon which money is paid; have charge of the books and accounts of Foothill under the advice of the Treasurer and provide regular reports to the Executive Board..."*

Prior to making this recommendation, Foothill Transit staff researched how this role is filled at other transit agencies and discussed the position with our Independent Financial Auditors, Crowe-Horwath.



In all transit organizations surveyed, the Treasurer role is fulfilled by a staff person who is generally responsible for the following duties:

- Implement the Board approved investment and debt strategies
- Manage portfolio of investments and debt transactions
- Ensure compliance of investment/banking and debt functions with established Board policy and local, state and federal statutory and legislative restrictions
- Approve and oversee contracts with banks, underwriters, other financial service providers, and governmental agencies

Examples of additional duties observed at other transit agencies also include the following:

- Oversee administration of the defined contribution and deferred compensation plans (401A and 457 plans)
- Oversee revenue collection and cash management
- Direct development of funding and cash management plans
- Oversee implementation and enforcement of electronic payment and check distribution and approval policies

Nearly all agencies surveyed confirmed that they have a staff member identified as the “Treasurer” (Long Beach Transit does not use the Treasurer as a job title). In many instances, the individual also has other financial duties. The size of the agency, amount of debt and investments, and complexity of financial transactions create different staffing requirements.

Budget Impact

This action will not result in a change to the budget as all of the aforementioned duties and responsibilities are already being functionally performed by Foothill Transit staff.

Sincerely,

Doran J. Barnes
Executive Director

Attachments



RESOLUTION NO. 2015-05

A RESOLUTION OF THE EXECUTIVE BOARD OF FOOTHILL TRANSIT APPOINTING THE
DIRECTOR OF FINANCE AS THE TREASURER

The Executive Board of Foothill Transit does resolve as follows:

1. **Findings.** The Executive Board hereby finds and declares the following:

A. California Government Code Section 6505.5 requires Foothill Transit to designate an individual to fill the office of Treasurer and Auditor, while Section 6505.6 provides that an employee of Foothill Transit may fill either office.

B. Section 3.E of the Foothill Transit Joint Exercise of Powers Agreement provides that the Executive Board may designate the Treasurer and Auditor.

C. The Executive Board desires to appoint the Director of Finance, an employee of Foothill Transit, as its Treasurer.

D. The Executive Board desires to continue to appoint an outside certified public accounting firm as its Auditor.

2. **Action.**

A. The Director of Finance is hereby appointed as the Treasurer of Foothill Transit, and this appointment shall remain in full force and effect until such time, if any, as the Executive Board may amend or rescind this Resolution.

B. The Executive Director shall remain responsible for the accuracy of bills and vouchers upon which money is paid; have charge of the books and accounts of Foothill under the advice of the Treasurer.

3. **Adoption.** PASSED AND ADOPTED at a meeting of the Executive Board held on May 29, 2015, by the following vote:

AYES:

NOES:

ABSTAIN:

APPROVED AS TO FORM:
Darold D. Pieper, Attorney at Law

By: _____
Darold Pieper, General Counsel

CAROL HERRERA, Chair

ATTEST:
Garen Khachian, Commission Services
Los Angeles County Board of Supervisors

By: _____
Secretary

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MEMORANDUM

To: Honorable Chair and Executive Board Members

From: Darold Pieper, General Counsel



Date: May 11, 2015

Subject: Appointment of Foothill Transit Treasurer

Questions have been raised about the role of an Executive Board member who serves as the Foothill Transit Treasurer since that individual has no significant role in the agency's financial process. This has given rise to concerns about possible legal and political liabilities should an error occur. Accordingly, I have evaluated the various procedures by which the Foothill Transit Treasurer may be appointed.

SUMMARY

It is my opinion that (i) no member of the Executive Board is required to serve as Treasurer; (ii) a Foothill Transit employee can be designated to serve as the Treasurer; and (iii) the Executive Board, not the Governing Board, may make the appointment.

ANALYSIS

I have reviewed the applicable authorities that governing the positions of Treasurer for Foothill Transit. These include, in order of priority:

Government Code

Government Code Section 6505.5:

If a separate agency or entity is created by the agreement, the agreement shall designate the treasurer of one of the contracting parties, or in lieu thereof, the county treasurer of a county in which one of the contracting parties is situated, or a certified public accountant to be the depository and have custody of all the money of the agency or entity, from whatever source.

Foothill Transit was created as a separate agency by its joint powers agreement. Although nominally bound to follow this procedure, it does not because Section 6505.6 provides an alternate procedure.

Government Code Section 6505.6:

In lieu of the designation of a treasurer and auditor as set forth in Section 6505.5, the agency or entity may appoint one of its officers or employees to either or both

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ATTORNEY AT LAW

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of such positions. Such offices may be held by separate officers or employees or combined and held by one officer or employee. Such person or persons shall comply with the duties and responsibilities of the office or offices as set forth in subdivisions (a) to (d), inclusive, of Section 6505.5.

In the event the agency or entity designates its officers or employees to fill the functions of treasurer or auditor, or both, pursuant to this section, such officers or employees shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505.

As authorized by Section 6505.6, Foothill Transit has historically appointed one of its officers to hold the position of treasurer. It has also caused an annual audit to be conducted by a certified public accountant as required by that same section. Note that until recently, it could not appoint an employee to serve in that position because the agency had no employees.

Joint Power Agreement

The Joint Powers Agreement provides in relevant part as follows:

Section 3.E—Secretary, Treasurer, Auditor and Counsel:

The Executive Board may appoint a Secretary of the Board. Subject to the restrictions contained in Sections 6505.5 and 6505.6 of the California Government Code, the Board may designate the treasurer and auditor of Foothill Transit or may appoint one of its officers to either or both of such positions. Unless and until the Executive Board makes a contrary designation or appointment, the Executive Officer-Clerk of the Board of Supervisors shall be and act as the Secretary of the Executive Board, the County Treasurer shall be and act as the Treasurer of Foothill Transit, and the County Auditor-Controller shall be and act as the Controller (Auditor) of Foothill Transit. . . .

The default treasurer is the County Treasurer, “[u]nless and until the Executive Board makes a contrary designation or appointment...” In accordance with Section 3.E, the Executive Board has designated one of its members to be the treasurer. However, this section is permissive—it does not require that one of its members be treasurer. Neither does it provide that the treasurer can *only* be an officer *or* the County Treasurer. Rather, by referencing Section 6505.6, it leaves open the possibility that an employee could be designated the treasurer, and it vests this powers of appointment in the Executive Board.

Section 4(2)—Rulemaking Powers of Foothill Transit:

Foothill Transit shall have the power to adopt and implement such rules and regulations as may be necessary to effect the purposes of this Agreement and which do not conflict with any terms of this Agreement, including but not limited to the power to determine qualification and compensation, if any, of Board members, to determine the procedure for selection of Board members representing cities, their terms, their alternates, if any, and related requirements,

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to select officers of Foothill Transit not provided for in this Agreement, and to adopt rules relating to fares, routes, and service modifications including the delegation of specified powers relating to Board.

This section gives the Governing Board the power to adopt rule and regulations, including the power to select officers “not provided for in this Agreement....” However, the position of treasurer is provided for in the joint powers agreement, so this section does not illuminate the issue.

Section. 4.B—Powers of Board:

The Executive Board shall have the power to adopt and implement such rules and regulations as may be necessary to effect the purposes of this Agreement and which do not conflict with any terms of this Agreement or rules of Foothill Transit, including but not limited to the power to select officers and their terms and related requirements, to establish committees advisory to the Executive Board and the power to adopt parliamentary rules.

The section expands upon the power of the Executive Board to select its officers, their terms and related requirements given in Section 3.E above.

Based upon the Government Code and the Joint Powers Agreement, it appears that the Executive Board has the power to appoint either one of its own members or an employee of Foothill Transit as the Foothill Transit Treasurer.

Foothill Transit Rules

The Rules provide as follows:

Section 6—OFFICERS:

Officers of the Governing Board shall be members of the Executive Board.

This language dealing with officers does not provide further guidance on the selection of a treasurer.

Section 6.A—Transition Year:

Transition Year. For organizational purposes, the Board at its first meeting shall select officers of the Governing Board and Executive Board. At the next Governing Board meeting, and at the first regular annual Governing Board meeting in each succeeding calendar year, the Board shall nominate officers for ratification by the Governing Board as officers of the Governing Board and Executive Board.

Although referencing the first, transition year, of the agency, this section does reference an annual selection of officers by the Executive Board with subsequent ratification by the

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Governing Board. Although the agency has followed this practice since its inception, it appears to be inconsistent with Section 3.E which vests the power to appoint officers solely in the Executive Board, without the qualification of ratification by the Governing Board.

Section 6.B–Selection:

The Executive Board shall select from its members a chair and vice chair at its first meeting, and thereafter in each succeeding calendar year the Board shall nominate or re-nominate its chair and vice chair and may appoint a treasurer or auditor/controller or both. The positions of treasurer and auditor/controller may be combined and held by one officer or combined with the position of chair or vice-chair. In the event that the chair, vice chair, or treasurer/auditor-controller ceases to be a member of the Executive Board, the resulting vacancy shall be filled at the next meeting of the Executive Board held after each vacancy occurs. In the absence or inability of the chair, the vice chair shall act as chair. The chair, or in his/her absence the vice chair, shall preside at and conduct all meetings of the Executive Board and Governing Board.

This section made mandatory the selection of a chair and vice chair, but it makes optional the appointment of a treasurer among the Executive Board members. It does not expressly consider the appointment of an employee as treasurer, nor does it prohibit it.

Conclusion

Accordingly, it is my opinion that the Executive Board may appoint an agency employee to be the Treasurer of Foothill Transit. This is authorized by the Government Code, and nothing in the Joint Powers Agreement or the Rules prohibit it. The Governing Board would not be required to ratify the appointment because this individual, although serving as an officer of Foothill Transit, would not be an officer of the Executive Board or the Governing Board.